EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2 DOCKET NO.: 2007-1821-MSW-E TCEQ ID: RN105359392 CASE NO.: 34895 RESPONDENT NAME: JUAN ANTONIO DIAZ DBA TONY'S TIRE SERVICE

ORDER TYPE:							
_1660 AGREED ORDER	FINDINGS AGREED ORDER	FINDINGS ORDER FOLLOWING SOAH HEARING					
X FINDINGS DEFAULT ORDER	_SHUTDOWN ORDER	IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER					
AMENDED ORDER	_EMERGENCY ORDER	·					
CASE TYPE:							
AIR	_MULTI-MEDIA (check all that apply)	INDUSTRIAL AND HAZARDOUS WASTE					
PUBLIC WATER SUPPLY	PETROLEUM STORAGE TANKS	OCCUPATIONAL CERTIFICATION					
WATER QUALITY	SEWAGE SLUDGE	UNDERGROUND INJECTION CONTROL					
X MUNICIPAL SOLID WASTE	RADIOACTIVE WASTE	DRY CLEANER REGISTRATION					
TYPE OF OPERATION: Automobile tires		ad, San Antonio, Bexar County					
SMALL BUSINESS: X Yes	No	•					
OTHER SIGNIFICANT MATTERS: The regarding this facility location.	re are no complaints. There is no record of add	litional pending enforcement actions					
INTERESTED PARTIES: No one other tha	an the ED and the Respondent has expressed an	interest in this matter.					
COMMENTS RECEIVED: The Texas Reg	ister comment period expired on May 26, 2008	3. No comments were received.					
CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 767-3500 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563 TCEQ Regional Contact: Mr. Henry Karnei, San Antonio Regional Office, MC R-13 Respondent: Mr. Juan Antonio Diaz, 1100 Callaghan Road, Apt. 404, San Antonio, Texas 78298 Respondent's Attorney: Not represented by counsel on this enforcement matter.							

RESPONDENT NAME: JUAN ANTONIO DIAZ DBA TONY'S TIRE SERVICE DOCKET NO.: 2007-1821-MSW-E

FT	Don	oltv.	Coloulatio	n Mark	aboat (D	ICIA/)	
		any	Calculation	DII VVOIK	sneet (P	•	
Policy Revision 2 (Sep.	tember 2002)					PCW Revision No	vernoer 6, 2007
DATES Assigned				<u>Alfinani</u>			
PCW	8-Nov-2007 S	creeni	ng 30-Oct-2007	EPA Due		•	
RESPONDENT/FACILITY		74 E. C.			\$5850.00 April 100.00		
	Juan Antonio Diaz	dba To	ony's Tire Service				•
Reg. Ent. Ref. No. Facility/Site Region				Major	Minor Source	Major	
	Company of the second s				A Charles and the Charles and	1980	
CASE INFORMATION Enf./Case ID No.	34895	<u>ejase a e</u>		T No	. of Violations	12	
Docket No.	2007-1821-MSW-			<u>*</u>	Order Type	1660	
Media Program(s)		aste		En En		Marlin Bullard	
Multi-Media Admin. Penalty \$ I		\$0	Maximum	\$10,000	ECS ream	Enforcement Team 7	
					4		
		Pen	alty Calcula	ation Sec	tion		
TOTAL BASE PENAL	.TY (Sum of vi	olatio	n base penalti	es)		Subtotal 1	\$12,500
AD HICTMENTS (+/)	TO SUPTOTAL	4					FESSÉS LIVEAC
ADJUSTMENTS (+/-) Subtotals 2-7 are obtain	ned by multiplying the T	I otal Base	Penalty (Subtotal 1) b	y the indicated pe	rcentage.		
Compliance Histo						otals 2, 3, & 7	\$0
Notes	The Respondent	s have	no prior orders or		site within the		•
			past five years			_	
Culpability	No	1453.	0%	Enhancement		Subtotal 4	\$0
Notes	The Resi	onden	t does not meet th	ne culpability c	riteria		
Notes	1110 ((03)	Jonach	t does not meet th	ic carpability c	intona.		
Good Faith Effort	to Comply		0%	Reduction		Subtotal 5	\$0
	Before NOV N	OV to ED	PRP/Settlement Offer	eth dip englessente - ngere et e spesseden heliog at des Verde Verde endere N	Million of contraction of the co	OR CHAIR OR CHAIR VIRGINIAN INC.	
Extraordinary Ordinary	<u>tsi ng shailina ilina a ag</u> Bilang						
N/A	х (m	ark with x)			7	
Notes	The Resp	ondeni	does not meet th	e good faith c	riteria. 、		
	zykie litry I ZX i II.						
	T-1-I ED A			Enhancement*	C Amazini	Subtotal 6	\$0
Approx. (Total EB Amounts Cost of Compliance	\$244 \$4,180	Cappe	d at the Total ED	φ Amount		
CUM OF CUDTOTAL	S 40-7	Switten					\$12,500
SUM OF SUBTOTALS	2 4-7					-mai Subtotal	φ12,500
OTHER FACTORS AS	S JUSTICE MA	Y REC	UIRE	0%		Adjustment	\$0
Reduces or enhances the Final S	ubtotal by the indicated	percenta	ge.			7	
Notes							
	en tradition			<u></u>]	640 500
•					Final Pe	nalty Amount	\$12,500
STATUTORY LIMIT A	DJUSTMENT				Final Asse	essed Penalty	\$12,500
 Control of the Control of the Control	ander var en		1	3 The Control of the		- Maria Salan Sala	
DEFERRAL Reduces the Final Assessed Pena	ally by the indicted perc	ontano i	(Enter number only: A	0%	Reduction	Adjustment	\$0
, todabes the Fillal Assessed Fell	and by the muleton perc	o.nogo.		g. 20 (0) 20/0 (60)			
Notes			Deferral not offer	ed.	•		
Į						j	A WINDOW
PAYABLE PENALTY		in the					\$12,500

Screening Date 30-Oct-2007

Docket No. 2007-1821-MSW-E

PCW

Respondent Juan Antonio Diaz dba Tony's Tire Service

Case ID No. 34895

Reg. Ent. Reference No. RN105359392

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Policy Revision 2 (September 2002) PCW Revision November 6, 2007

	Component	r Site Enhancement (Subtotal 2) Number of	Enter Number Here	Adjust.	
	NOVs `	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	- 0%	
ŀ		Other written NOVs	0	0%	
Ī		Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%	
	Orders	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission		0%	
		Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)		0%	
	and Consent Decrees	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government		0%	
Ī	Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%	
	Emissions	Chronic excessive emissions events (number of events)	0	0%	
	Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)		0%	
	, tadita	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%	
-		Plea	se Enter Yes or No		
ļ	•	Environmental management systems in place for one year or more	No	0%	
	Other	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%	
	Other	Participation in a voluntary pollution reduction program	No	0%	
		Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%	
	1	Adjustment P	ercentage (Su	btotal 2)	(
epea	t Violator (Su	btotal 3)		enerva e	
	No	Adjustment P	ercentage (Su	btotal 3)	(
ompl	iance History	Person Classification (Subtotal 7)			
	Average Pe	erformer Adjustment P	ercentage (Su	btotal 7)	(
ompl	iance History	Summary			agar Gell
	Compliance History Notes	The Respondents have no prior orders or NOVs at this site within the past five ye	ars.		

Screening Date	30-Oct-2007 Docket No. 2007-1821-MSW-E	PCW
Respondent	Juan Antonio Diaz dba Tony's Tire Service	Policy Revision 2 (September 2002)
Case ID No.		PCW Revision November 6, 2007
Reg. Ent. Reference No.	RN105359392	
Media [Statute]	Municipal Solid Waste	
Enf. Coordinator	Marlin Bullard	·
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code §§ 328.60(a) and 330.7(a)	
Violation Description	Failed to obtain a scrap tire storage registration prior to storing more than 500 documented during an investigation conducted on April 5, 2007. Specific approximately 3,000 used and/or scrap tires were observed being stored at without a scrap tire storage registration.	ally,
	Base	Penalty \$10,000
>> Environmental, Property a	nd Human Hoalth Matrix	•
>> Environmental, Froperty a	Harm	
Release	Major Moderate Minor	
OR Actual		
Potential	Percent 0%	
>>Programmatic Matrix Falsification	Major Moderate Minor	-
Faisincation	x Percent 25%	
Matrix Notes	100% of the rule requirement was not met.	
	Adjustment	\$7,500
		\$2,500
Violation Events		
Number of Vic	lation Events 208 Number of violation day	s
Number of vic	lation Events 200 Inditiber of violation day	"
	daily	
	monthly	
mark only one	quarterly X Violation Base	Penalty \$7,500
with an x	semiannual	
	, annual	
	single event	
Three qual	terly events are recommended from the April 5, 2007 investigation to the Octo 2007 screening date.	per 30,
	moo. corooning duto.	
Economic Benefit (EB) for thi	s violation Statutory Limit Tes	t
Estimated	I EB Amount \$243 Violation Final Pena	alty Total \$7,500
	This visitation First Assessed Donalds (adjusted 5	or limits) \$7,500
	This violation Final Assessed Penalty (adjusted fo	اری از پر از

		conomic I	senetit w	orks	sneet		
Responden	L Juan Antonio D	iaz dba Tony's Tire	Service				
Case ID No	. 34895						
Reg. Ent. Reference No	. RN105359392						
	a Municipal Solid	Waste				Fig. 4. Sept. Sept.	Years of
Violation No	25 T	***************************************				Percent Interest	Depreciation
Violation	.v. i Žiaka ja sjireteketjetje	TV, ETM TEERVOERT VE	كنيان ويوار المعاد	graphic.	ugatangang, sela		
교육 중심 입자 보면 모임 모드 그 보다						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	n No commas or \$						
authorational and a second	The second of the second secon	in an an analogue of the Miller State of the Addition of the			and you or many to high and desired to the second to the	to a constant and a second	
Delayed Costs		ALERIZEVIZERE					
Equipment				0.0	\$0	\$0 I	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land		i i		0.0	\$0	Market n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	≅s√S/kn/a S/S	\$0
Remediation/Disposal	\$4,080	5-Apr-2007	12-Jun-2008	1.2	\$243	n/a	\$243
Permit Costs				0.0	\$0.	: n/a	\$0
Other (as needed)				.0.0	\$0	n/a	\$0
Notes for DELAYED costs		· · · · · · · · · · · · · · · · · · ·	approximate weig			s of \$80 per ton mul s.	tiplied by the
Avoided Costs	S AIVI	IUALIZE [1] avoide	d costs before e			one-time avoided c	
Disposal		IUALIZE [1] avoide	d costs before e	0.0	\$0	\$0	\$0
Disposal Personnel		IUALIZE [1] avoide	d costs before e	0.0	\$0 \$0	\$0 \$0	\$0 \$0
Disposal Personnel Inspection/Reporting/Sampling		IUALIZE [1] avoide	d costs before e	0.0 0.0 0.0	\$0 \$0 \$0	\$0 \$0 \$0	\$0 \$0 \$0
Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment		UALIZE [1] avoide	d costs before e	0.0 0.0 0.0 0.0	\$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0
Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]		UALIZE [1] avoide	ed costs before e	0.0 0.0 0.0 0.0 0.0	\$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0
Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		UALIZE [1] avoide	ed costs before e	0.0 0.0 0.0 0.0 0.0 0.0	\$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0
Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]		UALIZE [1] avoide	d costs before e	0.0 0.0 0.0 0.0 0.0	\$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0
Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		UALIZE [1] avoide	ed costs before e	0.0 0.0 0.0 0.0 0.0 0.0	\$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0

Screening Dat	9 30-Oct-2007	·	Docket No. 2007-1821-MS	SW-E	/ P€W
Responden	t Juan Antonio [Diaz dba Tony's Tire Servi	ce	Policy Re	evision 2 (September 2002)
Case ID No				PCWI	Revision November 6, 2007
Reg. Ent. Reference No					
Media [Statute		d Waste	•		
Enf. Coordinato	,				
Violation Number	<u> </u>				
Rule Cite(s		30 Tex. Adm	nin. Code § 328.57(c)		
Violation Descriptio	tires, as docu	umented during an investig lent transported used tires	re transporter prior to transpor gation conducted on April 5, 2 to an unauthorized site withous as a tire transporter.	007. Specifically,	
				Base Penalty	\$10,000
>> Environmental, Property	and Human I	Health Matrix			
		Harm			
Releas OR Actua		Moderate Minor	· ·		
Potentia		,444	Percent	0%	
>>Programmatic Matrix Falsification	Major	Moderate Minor	in between 1440 to the terminal of the second of the secon		
raisincation	x I	Moderate	Percent	25%	
Matrix Notes		100% of the rule require	ment was not met.		
			Adjustment	\$7,500	
				Farmmal	\$2,500
Violation Events					
Number of V	iolation Events	2	Number of vio	lation days	
mark only one with an x	daily monthly quarterly semiannual annual single event	X	Viola	tion Base Penalty[\$5,000
Two quart	erly events are re	ecommended from the Ap date of comp	ril 5, 2007 investigation to the liance.	August 10, 2007	
Economic Benefit (EB) for the	nis violation		Statutory L	imit Test	
and the second s	d EB Amount	\$2		inal Penalty Total	\$5,000
		This violation	n Final Assessed Penalty (a	djusted for limits)	\$5,000

	Е	conomic E	Benefit W	ork	sheet		
Respondent	Juan Antonio D	iaz dba Tony's Tire	Service	and a terminar	bakib dayar kabatan e da arti ina sa	The second of the second sections	a that down to make all official for do
Case ID No		,					
Reg. Ent. Reference No							
and the control of th	Municipal Solid	Waste :					Years of
Violation No.	· ·	vvasie				Percent Interest	Depreciation
Violation ivo	. 4	Brail College with piles Annicologic		58'923 F	grandina realista dega		one C. M. Marini, Caledona and San A. M.
						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
成長型(Latina Artification Confession Latina Conf	C. C. March Management & an art for many		The state of the s	man Marie and Mile Ramade	and the defining and the second resemble to the first second		tion of got before he did to a label obstacle broken a gent
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	* \$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land	Section 1995			0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	Tarania de la ca			0.0	\$0	i i i en/a	\$0
Remediation/Disposal			<u> </u>	0.0	\$0	n/a -	\$0
Permit Costs	\$100	5-Apr-2007	10-Aug-2007	0.3	\$2	n/a	\$2
Other (as needed)			•	0.0	\$0	in/a-	\$0
Notes for DELAYED costs			Date is the	date of	compliance.	the investigation dat	
Avoided Costs	ANN	UALIZE [1] avoide	d costs before e			one-time avoided c	
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0 \$0	\$0 ©0
ONE-TIME avoided costs [3]			<u> </u>	0.0	\$0 \$0	\$0 \$0	\$0 \$0
Other (as needed)		<u> </u>	<u></u>	<u> U.U </u>	1 00	<u> </u>	<u> </u>
•		*					
Notes for AVOIDED costs		÷					
		<u> </u>		1000	<u>Estracté (co </u>		
Approx. Cost of Compliance		\$100			TOTAL		\$2

Compliance History

Custome	er/Resp	ondent/Owner-Operator:	CN60326380	7. DIAZ	, JUAN ANTONIO		Classification: AVERAGE	Rating: 3,01
Regulated Entity:		RN10535939	92 TON	YS TIRE SERVICE		Classification: AVERAGE BY DEFAULT	Site Rating: 3.01	
ID Numb	oer(s):		TIRES			REGISTRA	TION,	6200440
Location	:		17115 MART	INEZ LOSO	YA RD, SAN ANTON	IO, TX, 78221	Rating Date: 9/1/2007 Repe	eat Violator: NO.
TCEQ R	legion:		REGION 13 -	SAN ANTO	NIO .			
Date Co	mpliano	ce History Prepared:	November 13	3, 2007				
Agency I	Deċisio	n Requiring Compliance History:	Enforcement			·		
Complia	nce Pe	riod:	November 13	, 2002 to No	vember 13, 2007			
TCEQ S	taff Mei	mber to Contact for Additional Info	rmation Regard	ing this Com	pliance History			
Name:		Marlin Bullard	<u>:</u>	Phone:	(254) 761-3038		· .	
			Sit	e Complia	nce History Comp	onents		
1. Has th	ne site t	peen in existence and/or operation	for the full five	year complia	nce period?	No		
2. Has th	ere bė	en a (known) change in ownership	of the site durin	ng the compli	ance period?	No		
3. If Yes,	, who is	the current owner?				N/A		
4. if Yes	, who v	vas/were the prior owner(s)?				N/A		
5. When	did the	change(s) in ownership occur?				N/A		_
Compo	nents	(Multimedia) for the Site :					•	
Α	Final	Enforcement Orders, court judger	nents, and cons	ent decrees	of the state of Texas	and the federal	government.	en e
•	N/A							
B.	Any	criminal convictions of the state of	Texas and the f	ederal gover	nment.			
	N/A							,
C.	Chro	nic excessive emissions events.						
	N/A			,				
D.	The a	approval dates of investigations. (C	CCEDS Inv. Trac	ck. No.)				
	N/A					•		
E.	Writte	en notices of violations (NOV). (CC	CEDS Inv. Track	No.)				
F.		onmental audits. /A						
G.	Туре	of environmental management sy	stems (EMSs).		•			
	N/A	,						
Н.	Volur	ntary on-site compliance assessme	ent dates.			•	•	
	N/A							
r.	Partio	cipation in a voluntary pollution red	luction program.					•
	N/A							
J.	Early	compliance.				,		
	N/A						•	
Sites Out	tside of	Texas		٠.		•		
	N/A	·						

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
JUAN ANTONIO DIAZ DBA	§	
TONY'S TIRE SERVICE;	§	ENVIRONMENTAL QUALITY
RN105359392	§	•

DEFAULT ORDER DOCKET NO. 2007-1821-MSW-E

At its agenda, the Texas Commission on Environmental C	uality,
("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and I	etition
filed pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and the rule	s of the
TCEQ, which requests appropriate relief, including the imposition of an administrative pena	lty and
corrective action of the respondent. The respondent made the subject of this Order is Juan A	ntonio
Diaz dba Tony's Tire Service ("Mr. Diaz").	

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- 1. Mr. Diaz owns and/or operates an automobile tires service facility located west and south of 17115 Martinez Losoya Road, San Antonio, Bexar County, Texas; Bexar County Appraisal District property identification number 162792 (the "Facility").
- 2. The Facility involves the management and/or the disposal of municipal solid waste as defined in Tex. Health & Safety Code ch. 361.
- 3. During an inspection conducted on April 5, 2007, a TCEQ San Antonio Regional Office investigator documented that Mr. Diaz:
 - a. Failed to obtain a scrap tire storage registration prior to storing more than 500 tires. Specifically, approximately 3,000 used and/or scrap tires were observed being stored at the site without a scrap tire storage registration.
 - b. Failed to register with the TCEQ as a tire transporter prior to transporting used or scrap tires. Specifically, the Respondent transported used tires to an unauthorized site without registering with the TCEQ as a tire transporter.

- 4. Mr. Diaz received notice of the violations on or about September 28, 2007.
- 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Juan Antonio Diaz dba Tony's Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on January 23, 2008.
- 6. By letter dated January 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Diaz with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Diaz received notice of the EDPRP.
- 7. More than 20 days have elapsed since Mr. Diaz received notice of the EDPRP, provided by the Executive Director. Mr. Diaz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

- 1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Diaz is subject to the jurisdiction of the TCEQ pursuant to Tex. Health & Safety Code ch. 361 and the rules of the Commission.
- 2. As evidenced by Finding of Fact No. 3.a., Mr. Diaz violated 30 Tex. Admin. Code §§ 328.60(a) and 330.7(a) by failing to obtain a scrap tire storage registration prior to storing more than 500 tires. Specifically, approximately 3,000 used and/or scrap tires were observed being stored at the site without a scrap tire storage registration.
- 3. As evidenced by Finding of Fact No. 3.b., Mr. Diaz violated 30 Tex. Admin. Code § 328.57(c) by failing to register with the TCEQ as a tire transporter prior to transporting used or scrap tires. Specifically, the Respondent transported used tires to an unauthorized site without registering with the TCEQ as a tire transporter.
- 4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Diaz with proper notice of the EDPRP, as required by Tex. WATER CODE § 7.055 and 30 Tex. ADMIN. CODE § 70.104(c)(2).
- 5. As evidenced by Finding of Fact No. 7, Mr. Diaz has failed to file a timely answer to the EDPRP, as required by Tex. Water Code § 7.056 and 30 Tex. Admin. Code § 70.105. Pursuant to Tex. Water Code § 7.057 and 30 Tex. Admin. Code § 70.106, the Commission

Juan Antonio Diaz dba Tony's Tire Service TCEQ Docket No. 2007-1821-MSW-E Page 3

may enter a Default Order against Mr. Diaz and assess the penalty recommended by the Executive Director.

- 6. Pursuant to Tex. Water Code § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Diaz for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
- 7. An administrative penalty in the amount of twelve thousand five hundred dollars (\$12,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in Tex. Water Code § 7.053.
- 8. Tex. Water Code §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Diaz is assessed an administrative penalty in the amount of twelve thousand five hundred dollars (\$12,500.00) for violations of Tex. Health & Safety Code ch. 361 and rules of the TCEQ. The payment of this administrative penalty and Mr. Diaz's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Juan Antonio Diaz dba Tony's Tire Service; Docket No. 2007-1821-MSW-E" to:

Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

2. Mr. Diaz shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, cease accepting any additional tires at the Facility, until properly authorized;
- b. Within 15 days after the effective date of this Order, obtain a scrap tire storage registration or reduce the number of tires being stored on-site to 500 or less on the ground and/or 2,000 tires in enclosed and lockable containers, in accordance with 30 Tex. Admin. Code §§ 328.56 and 328.60;
- c. Within 30 days after the effective date of this Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager San Antonio Regional Office Texas Commission on Environmental Quality 14250 Judson Road San Antonio, Texas 78233

- 3. All relief not expressly granted in this Order is denied.
- 4. The provisions of this Order shall apply to and be binding upon Mr. Diaz. Mr. Diaz is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
- 5. If Mr. Diaz fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Diaz's failure to comply is not a violation of this Order. Mr. Diaz shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Diaz shall notify the Executive Director within seven days after Mr. Diaz becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Diaz shall be made in writing to the Executive Director. Extensions are not effective until Mr. Diaz receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Diaz if the Executive Director determines that Mr. Diaz has not complied with one or more of the terms or conditions in this Order.
- 8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
- 9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 Tex. ADMIN. CODE § 70.106(d) and Tex. Gov't Code § 2001.144.

Juan Antonio Diaz dba Tony's Tire Service TCEQ Docket No. 2007-1821-MSW-E Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Gary K. Shiu. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Juan Antonio Diaz dba Tony's Tire Service" (the "EDPRP") with the Office of the Chief Clerk on January 23, 2008.

I sent the EDPRP to Mr. Diaz at his last known address on January 23, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 Tex. ADMIN. Code § 70.104(c)(2).

More than 20 days have elapsed since Mr. Diaz received notice of the EDPRP. Mr. Diaz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."

Gary K. Shiu Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this \mathcal{T}^{th} day of \mathcal{MArCh} , A.D., 2008.

Mehgan Taack
Notary Public
Notary Public
State of Texas
My Commission Expires
April 25, 2011

Notary Signature